

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GEORGE PEEK,

Plaintiff,

v.

SUSAN LIGHTFOOT,

Defendant.

Case No. 2:19-cv-262

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983 against Defendant nurse/medical staff member Susan Lightfoot alleging “negligent treatment” while Plaintiff was an inmate at the Chippewa County Jail. Defendant filed a motion to dismiss (ECF No. 13), to which Plaintiff did not respond. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) on October 28, 2020, recommending the motion be granted because Plaintiff failed to make any allegations against Defendant Lightfoot that could rise to the level of deliberate indifference to his serious medical needs under the Eighth Amendment and Plaintiff failed to allege any personal involvement by Defendant Lightfoot to support an official capacity claim. The Magistrate Judge further recommended that to the extent Plaintiff has asserted any violation of his state law rights, the Court refuse to exercise pendent jurisdiction over such claims and that they be dismissed.

Following the Report and Recommendation, the Court received and docketed Plaintiff’s Rule 15 Motion to Amend Complaint and attached proposed amended complaint (ECF No. 17),

and a second, essentially duplicate, Motion, docketed as Supplement to the first Motion (ECF No. 18).¹ Plaintiff's Motion states that he believed Defendant Lightfoot was responsible for his injuries, but after he consulted with an experienced jailhouse lawyer, he learned who the proper defendants are, and they are now named in his proposed amended complaint. Plaintiff's amended complaint acknowledges that his previous complaint alleged his injuries were caused by a person not responsible for them, i.e., Defendant Lightfoot, and names Chippewa County and Chippewa County Sheriff, Michael Bitnar, as defendants. In Plaintiff's subsequent Objection to the Report and Recommendation (ECF No. 19), he states he filed a motion to amend his complaint and dismiss Defendant, that he has not received a ruling on his motion, and that his amended complaint names Chippewa County and the Chippewa County Sheriff as the only defendants.

Defendant has filed a Response (ECF No. 20), noting that although Plaintiff's Objection is untimely, Defendant concurs with Plaintiff's requested relief to dismiss her from this matter, as the Report and Recommendation's analysis is correct. Defendant requests this Court accept the Magistrate's findings, and dismiss all claims against her with prejudice.

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. Under Federal Rule of Civil Procedure 15(a)(2), "[t]he court should freely give leave [to amend a complaint] when justice so requires." Under the circumstances presented, the Court will grant Plaintiff's motion to amend the complaint. The Court will adopt

¹ Plaintiff's two Motions are dated as signed on August 28, 2020, but were not received by the Court until November 4 and 23, 2020, apparently because of an initial insufficient address. Given the Court's disposition, the significant delay in receipt and docketing of the Motions is not material.

the Report and Recommendation in so far as it recommends dismissal of all claims against Defendant Lightfoot, and will deny Plaintiff's Objection as moot.

Based on Plaintiff's concurrence in the relief, because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint, as supplemented (ECF Nos. 17, 18) is GRANTED; the Clerk of the Court shall accept for filing Plaintiff's proposed amended complaint, as supplemented (ECF No. 18-1).

IT IS FURTHER ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 16) is APPROVED and ADOPTED as the Opinion of the Court with respect to the dismissal of all claims against Defendant Lightfoot; Plaintiff's Objection (ECF No. 19) is DENIED as moot.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (ECF No. 13) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: December 15, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge